

EXTRACT

FROM THE

ROYAL INSTRUCTIONS

TO

HIS EXCELLENCY THE RIGHT HONORABLE

George Earl of Dalhousie, G. C. B.

CAPTAIN GENERAL AND GOVERNOR IN CHIEF, &c. &c. &c.

RELATING TO THE GRANTS

OF THE

WASTE LAND OF THE CROWN,

WITH OTHER PAPERS ON THE SAME SUBJECT

LAID BY ORDER OF HIS EXCELLENCY,

BEFORE THE HOUSE OF ASSEMBLY,

THE 5TH FEBRUARY,

1823.

EXTRACT from the Royal Instructions to His Excellency the Right Honourable George, Earl of Dalhousie, G. C. B. Captain General and Governor in Chief, &c. &c. &c.

AND whereas nothing can more effectually tend to the speedy settling of our said Province of Lower Canada, the security of the property of our Subjects and the advancement of our Province, than the disposal of such Lands as are our property, upon reasonable terms, and the establishing of a regular and proper method of proceeding with respect to the passing of Grants of such Lands, it is therefore our will and pleasure, that all and every person or persons who shall apply for any Grant or Grants of Land, shall, previous to their obtaining the same, make it appear that they are in a condition to cultivate and improve the same; and in case you shall, upon consideration of the circumstances of the person or persons applying for such Grants, think it advisable to pass the same, you are in such case to cause a Warrant to be drawn up, directed to the Surveyor-General, or other Officers, empowering him or them to make a faithful and exact Survey of the Lands so petitioned for, and to return the said Warrant within six months at furthest, from the date thereof, with a Plot or Description of the Lands so surveyed, thereunto annexed, and when the Warrant shall be returned by the Surveyor or other proper Officer, the Grant shall be made out in due form, and the terms and conditions required by these our Instructions be particularly and expressly mentioned.

And it is our will and pleasure, that the said Grants shall be registered within six months, from the date thereof, in the Register Office, and a Docket thereof be also entered in our Auditor's Office. Copies of all which Entries shall be returned regularly by the proper Officer to our Commissioners of our Treasury.

And for the further encouragement of our Subjects, it is our will and pleasure that the Lands, to be granted by you as aforesaid, shall be laid out in Townships, and that such Inland Township shall, as nearly as circumstances will admit, consist of ten miles square, and such as shall be situated upon a navigable River or Water, shall have a front of nine miles and be ten miles in depth, and subdivided in such a manner as may be found most advisable for the accommodation of the Settlers and for making the several Reservations for Public Uses, and particularly for the Support of the Protestant Clergy, agreeably to the above recited Act passed in the thirty first year of our Reign.

And whereas great inconveniences have heretofore arisen in many parts of the Colonies in America from the granting excessive quantities of Land to particular persons who have never cultivated or settled the same, and have thereby prevented others more industrious from improving such Lands, in order therefore to prevent the like inconveniences in future, it is our will and pleasure, that you observe the following directions and regulations in all Grants to be made by you as aforesaid, that is to say, That no Town Lot shall be granted to any one person being Master or Mistress of a Family in any Township to be laid out as aforesaid, which shall contain more than one acre of Land.

That no Park Lot shall be granted to any one person being Master or Mistress of a Family in any Township to be laid out, which shall contain more than twenty four acres.

That no Farm Lot shall be granted to any one person being Master or Mistress of a Family in any Township so to be laid out, which shall contain more than two hundred acres. It is our will and pleasure, and you are hereby allowed and permitted to grant unto any such person or persons such further quantity of Land as they may desire, not exceeding one thousand acres over and above what may have heretofore been

granted to them, and in all Grants of Lands to be made by you as aforesaid, you are to take care that due regard be had to the quality and comparative value of the different parts of Land comprised within any Township, so that such Grantee may have, as nearly as may be, a proportionate quantity of Land of such different quality and comparative value, as likewise that the breadth of each tract of Land to be hereafter granted, be one third of the length, and that the length of such Tract do not extend along the Banks of any River, but towards the main Land, and that thereby the said Grantees may have a convenient share of what accommodation the said River may afford for navigation or otherwise.

And as a further encouragement to our subjects who shall become Settlers as aforesaid, it is our will and pleasure, that the said Townships and the respective allotments within the same, together with the Lands to be reserved as aforesaid, shall be seen and laid out by our Surveyor General of Lands for the said Province, or some skilful persons authorized by him for that purpose, which Survey, together with the Warrants and Grants for the respective allotments, shall be made out for and delivered to the several Grantees free of any Expense or Fee whatsoever, other than such as may be payable to the different Officers according to the Table of Fees established upon Grants of Lands made in the said Province.

And in order to prevent any persons disaffected to us and to our Government from becoming Settlers in our said Province of Lower Canada, it is our will and pleasure, that no Warrants for Surveying Lands be granted by you, or the Lieutenant Governor, or the person Administering the Government for the time being, unless the person or persons applying for the same do at the time of making such application, besides taking the several Oaths directed by Law, also make and subscribe the following declaration in your or his presence

or in the presence of such person or persons as shall by you or him be appointed for that purpose, that is to say ; I *A. B.* do promise and declare that I will maintain and defend to the utmost of my power the authority of the King in his Parliament, as the Supreme Legislature of the Province.

Whereas the reserving of such bodies of Land within our said Province of Lower Canada, where there are considerable growth of Timber fit for the use of our Royal Navy, is a matter of the utmost importance to our Service, it is our will and pleasure, that no grants whatever be made of Lands within any District or Tract in our said Province of Lower-Canada until our Surveyor General of Woods, or his Deputy lawfully appointed, shall have surveyed the same and marked out as reservations to us, our Heirs and Successors, such parts thereof as shall be found to contain any considerable growth of Mastig or other Timber fit for the use of our Royal Navy, and more especially upon the Rivers ; and you are hereby instructed to direct our Surveyor General of Lands in our said Province, from time to time, with all due diligence, to complete the Surveys and mark out the reservations as aforesaid, in the most convenient parts of our said Province. And you are from time to time to report the number and situation of such reservations, and you are further to direct our Surveyor General not to certify any Plots of Ground, ordered and surveyed for any person or persons whatever, in order that Grants may be made for the same, until it shall appear to him, by a Certificate under the hand of our Surveyor of Woods or his Deputy, that the Land so to be granted is not part of or included in any District marked out as a reservation to us, our Heirs and Successors as aforesaid, for the purposes hereinbefore mentioned. And in order to prevent any deceit or fraud from being committed by the person applying for Land in this respect, it is our will and pleasure, that in all grants to be hereafter made for Lands in our

said Province of Lower Canada, the following Proviso and exception be inserted, that is to say, " And provided also that no part of the parcel or tract of Land hereby granted to the said——— and his heirs be within any reservation heretofore made and marked for us, our Heirs and Successors by our Surveyor General of Woods or his lawful Deputy, in which case this our Grant for such part of the Land hereby given and granted to the said——— and his Heirs for ever as aforesaid, and which shall, upon a Survey thereof being made, be found within any such reservation, shall be null and void and of none effect, any thing herein contained to the contrary notwithstanding.,,

And whereas it is necessary that all persons who may be desirous of settling in our said Province should be fully informed of the terms and conditions upon which such Lands will be granted within our said Province of Lower Canada, in manner prescribed in and by the said Act passed in the Thirty-first year of the reign of our Dearest Father His late Majesty King George the Third, You are therefore as soon as possible, to cause a Publication to be made, by Proclamation or otherwise as you in your discretion shall think most advisable, of the said terms and conditions respecting the granting of Lands, in which Proclamation it may be expedient to add some short description of the natural advantages of the soil and climate, and the peculiar convenience for trade and navigation.

And it is our further will and pleasure, that all the foregoing Instructions to you, as well as any which you may hereafter receive, relative to the passing Grants of Land in conformity to the said Act passed in the Thirty-first year of the Reign of King George the Third, be entered upon record for the information of all parties whatsoever that may be concerned therein."

Certified to be a true Extract.

A. W. COCHRAN, Secy.

To His Excellency Sir Robert Shore Milnes, Bart.
Lieutenant Governor of the Province of Lower-
Canada, &c. &c. &c.

Report of the Permanent Committee of the whole
Council.

Present, The Chief Justice, the Lord Bishop of
Quebec, Messrs. Finlay, Baby, Dunn and Young.

On the Memorial of Samuel Gale to the Lords of
His Majesty's Most Honourable Privy Council, on be-
half of sundry Applicants for Grants of various Tracts
and Parcels of the Waste Lands of the Crown, in this
Province, which Memorial was by His Grace the Duke
of Portland transmitted to Your Excellency, to be re-
ferred to the Executive Council of Lower Canada.

May it please Your Excellency,

In obedience to the order of reference signified by
His Majesty's Secretary of State, and communicated
by Your Excellency, of the Memorial of Samnel Gale,
to the Lords of His Majesty's Most Honourable Privy
Council, respecting the Waste Lands of the Crown in
this Province, the Committee have taken the same in-
to their serious consideration, and they cannot but ex-
press their regret, that after the toilsome hours they
have employed in permanent Committee, during a pe-
riod of fourteen months, in arranging, considering,
and from time to time reporting upon the many hun-
dred claims referred to them, and in such Reports care-
fully assigning the principles on which their opinions
were framed; and that after having submitted to Your
Excellency their concluding and summary Report, con-
taining a detail of their progress, together with an Ap-
pendix, presenting a Synoptical Table of the Result of
their whole Proceedings, by which they well hoped that
the discretion and diligence manifested therein, would
be both creditable to themselves and satisfactory to His
Majesty, they should at this day be called upon to vin-
dicate their Conduct against the Charges of an Indivi-

dual, the particulars of whose authority to interfere they know not. When they reflect on the motives by which they have been actuated, of the purity of which they are conscious, and on the station to which it has pleased His Majesty to call them in His Councils in this Province, where their integrity ought to be above suspicion; it becomes a question whether it be fitting they should condescend to give any other answer to the imputations urged against them, than by referring to the whole of their proceedings as they appear upon Record; but when they consider the respect due to the quarter from which the Memorial before them was transmitted, and the possibility that a statement of detached facts, partially selected from a mass of proceedings, may be so artfully arranged, as to give a plausible appearance to a charge of inconsistency, that the fallacy of such charge cannot be detected but by those who have a distinct, complete and comprehensive knowledge of the business in question, and that the minute research requisite to the attainment of such information, can neither be expected from the Lords of His Majesty's Most Honourable Privy Council, nor possibly from any party by them employed for such purpose, the Committee induced by a desire of standing justified in the opinion of His Majesty's Council, will not hesitate to enter into that detail, in vindication of their conduct, which they would deem it unbecoming to adduce before a less dignified Tribunal.

After an attentive perusal of the Memorial in question it appears that the complaints made against His Majesty's Executive Council in this Province may be reduced to three general heads, in the course of which some specific cases are mentioned.

1st The first respects the delays in issuing legal Grants to those possessed of Certificates or Copies of Orders passed by the Governor and Council, and of Warrants of Survey; and more especially to the Ap-

plicants for the Townships of Shefford, Orford and Stukely.

2d The inconsistency of the Executive Council respecting the encouragement for actual Settlement.

3d The conduct of the Executive Council with respect to the requisite of taking the Oaths.

The Committee propose to make some observations on each of these general heads, and to give a distinct answer to every special case stated in said Memorial.

With regard to the first complaint, namely, the delay of giving legal Grants to those possessed of Location Certificates with directions to the Surveyor General's Department to give them possession thereof—After premising that many hundreds are, or might be in actual possession of their Lands under such Certificates and that their right has ever been deemed so unquestionable that comparatively speaking they have evinced little anxiety to obtain formal Titles, the Committee are ready to admit that very few actual Grants have been made out, a circumstance for which, they trust, they can account upon grounds that will not involve any imputation upon the good faith of this Government.

During the late War the 84th Regiment had been raised upon the express promise that each Individual should obtain a specific portion of Land on their being reduced, settling and becoming Inhabitants of this Province—When that period arrived, Certificates were granted and possession taken whenever the parties thought proper, and several Provincial Corps obtained specific portions in consequence of Royal Instructions to that end.

Some time after, the Canada Act was passed, in which the Legislature deemed it expedient to enact in the most positive term, "That no future Grant of
" Lands should be valid or effectual unless the same
" shall contain a specification of Land to be allotted

“ and appropriated for the purposes therein mentioned
 “ in respect to the Land to be thereby granted.”

Hence Questions arose whether the Grants of Certificate Lands came within the operations of the Act, the Certificates having been granted previously to the passing thereof by Tenure *en Seignurie* upon the first application made to the Committee upon this subject, they drew up a Report of which the following is an Extract :

“ The next Memorial referred to this Committee is
 “ marked No. 240, and is the Memorial of Malcolm
 “ Fraser, a Captain in the late 84th Regiment, praying
 “ Patents for 8,000 Acres of Land in the Township of
 “ Chatham, being the King's bounty to himself and
 “ others, upon which the *Land Committee* observe that
 “ the prayer raises a question which the Officers and
 “ Privates of that corps have long earnestly wished
 “ might be decided, namely, whether under the Act
 “ of the 31st of His Majesty any Patent for Land can
 “ pass to any person whatever under any circumstance,
 “ before an actual Survey of the Township and a sub-
 “ division thereof into Lots of 200 acres shall have
 “ been made and laid out, in conformity to the Dia-
 “ gram D or E, as the case may require, and the re-
 “ servations for the maintenance of a Protestant Cler-
 “ gy and for the future disposition of the Crown, shall
 “ have been admeasured and marked in the Field, not-
 “ withstanding Location Certificates have been grant-
 “ ed for portions of Land therein to the Officers and
 “ and Privates of the late 84th Regiment or to other
 “ persons, and therefore the Land Committee hum-
 “ bly request, that the said Petition may likewise be
 “ referred to a *Committee of the whole Council*, with
 “ which request Your Excellency has been pleased to
 “ comply.

“ This Committee humbly beg leave to observe to
 “ Your Excellency, that they are well aware the ques-
 “ tion now referred to them not only involves points

“ of considerable nicety and importance, but also that
 “ some points connected with this question may by
 “ possibility be brought before them when sitting in a
 “ different capacity, in which case it might be incon-
 “ venient to have delivered any previous opinion, but
 “ as the Committee are desirous of removing the doubts
 “ of so numerous a Class of His Majesty’s most deserv-
 “ ing Subjects, they are willing to submit their senti-
 “ ments to Your Excellency’s consideration, at the
 “ same time laying in their claim not to be bound by
 “ them in case of their seeing a necessity of departing
 “ therefrom, upon fuller information, should they be
 “ called upon at any future period to determine by so-
 “ lemn adjudication.

“ The Committee apprehend that with respect to
 “ the Reserves, the provisions of the Act 31st of the
 “ King, Cap. 31, are peremptory, and that no Grant
 “ of Lands that shall be made after the passing of that
 “ Act can be valid or effectual, unless such Grant con-
 “ tains a specification of the Reserves allotted and ap-
 “ propriated in respect of the Land to be thereby
 “ granted ; and with respect to reservations, the Com-
 “ mittee apprehend this distinction is to be taken.

“ That in those cases when Location Certificates
 “ shall have been granted previously to the passing of
 “ the said Act in certain specific Townships in number
 “ sufficient to exhaust one or more Townships, so that
 “ no space remains for reserved allotments within the
 “ said Townships, recourse must be had to the directi-
 “ ons in the said Act contained, whereby the Gover-
 “ nor, the Lieutenant-Governor or person Administer-
 “ ing Government, is authorized to make from and
 “ out of the Lands of the Crown, such allotment
 “ and appropriation of Lands for the support and main-
 “ tenance of a Protestant Clergy, within the Province,
 “ as may be in a due proportion to the amount of
 “ such Lands within the same as have at any time
 “ been granted by or under the authority of his Ma-

" jesty ; and that in all Patents to be granted for
 " Lands situated in Townships completely covered by
 " Location Certificates as aforesaid, the reserves to
 " be specified in respect thereof, should be taken
 " from the general allotment and appropriation so di-
 " rected to be made out of the said Act, the 31st of
 " the King, Cap. 31st, and in order to enable such
 " persons as have already received His Majesty's
 " Bounty by Location Certificates in manner herein-
 " before mentioned to obtain their Patents in confor-
 " mity to the said Act.

" The Committee are of opinion that it is absolute-
 " ly necessary forthwith to pursue the directions given
 " by the said Act for the purpose of providing a suf-
 " ficient appropriation of Lands for the use of a Pro-
 " testant Clergy, from which the reserves to corres-
 " pond with the Lands already granted by Certificates,
 " should be taken, and to that end the Committee res-
 " pectfully propose, that the Surveyor General should
 " be directed to lay before Your Excellency a Report
 " of the number of Acres of the Waste Lands of the
 " Crown for which Location Certificates have already
 " been granted, in order that Your Excellency may be
 " enabled to ascertain the extent of the general appro-
 " priation and allotment necessary to be made for the
 " purpose aforesaid, and further that the said Surveyor,
 " General be directed to report his opinion on the most
 " convenient mode of subdividing such general allot-
 " ment into such portions as shall be best calculated
 " to answer the purposes aforesaid, and thereby ena-
 " ble the Law Officers of the Crown to prepare the
 " Patents with a distinct specification of the Reserves
 " to be set apart in respect of the Lands for which Cer-
 " tificates have already been granted."

On perusal of this Extract the Committee apprehend
 that instead of being censurable for endeavouring to ob-
 struct the passing of formal Grants, they may be liable
 to the charge of indiscretion, for having travelled be-

yond their province, by hazarding opinions with a desire of giving satisfaction to so meritorious a class of His Majesty's subjects.

In addition to the delays and difficulties which must obviously arise from a performance of those requisites without which all Titles will ever remain impeachable, some delay has been occasioned by the precautions which the Committee have found it needful to exert, in order to prevent the provision of the Act from being eluded—and that the conduct of the Land Surveyors have given just occasion for the exercise of such vigilance, will appear from the extract of two several Reports subjoined in the Appendix, and marked with the Letters A. and B. respectively.

From a perusal of these documents, the Committee humbly apprehend that whatever delay may have taken place, it ought not to be imputed to any negligence on their part.

Having made these observations, the Committee will proceed to give distinct answers, to the several cases mentioned in this part of the Memorial, which are those of Shefford, Orford and Stukely; with respect to the Township of Shefford, in order to show how very ineffectual all schemes and plans have been in contemplation, for obtaining to the behoof of other persons, the legal Grant of this Township, the Committee will beg leave to transcribe the preamble to their Report respecting this Township, as it now stands on the Minutes of the Council of the 28th November last.

“The Committee proceeded to take into consideration the case of the Claimants of the Township of Shefford, whereof John Savage is Leader, and inasmuch as the said John Savage is well known to have been the first of His Majesty's subjects who suffered imprisonment on account of his loyalty in the County of Albany; that he was imprisoned during the space of four years, and that he after his enlargement was employed in many confidential services in behalf of

“Government, of which he acquitted himself with distinguished fidelity, the Committee have deemed themselves at liberty to make some slight deviation from their general rules, in favour of a character so truly meritorious, and to adopt and admit upon the Files the account delivered in and signed by himself, of the character and qualifications of his several Associates, and do therefore report and recommend that, &c.”

In regard to the Township of Orford, notwithstanding the various allegations that have been made concerning the expenses, time and labour, that have been employed upon this as upon many other Townships, it appears by reference to authentic documents, that the mere outlines only of the Township had been run—a Report bearing date 7th March 1800, has been made to Your Excellency, respecting this Township, in the following terms :

“On the Petition of Luke Knoulton for the Township of Orford.”

“On perusing the documents accompanying this Petition, it appears that the case of the Petitioner falls under the third Class: the Committee therefore recommend, that a Warrant of Survey and Subdivision do issue for the Township of Orford, and in consideration of the expenses incurred by the Petitioner, that he and his Associates do obtain a quarter part of the said Township at the old Fees.”

And a final Report upon the Return of the Warrant of Survey, has been made on the 23d February 1801, Book E. page 140—whereby

“It appears that a portion of the said Township situate in the South Easterly part thereof, consisting of sixty-eight Lots, exclusive of the Reserves for the Church and Crown, is contained within a line in the said Diagram drawn and distinguished by a yellow edge, which said portion the Committee humbly recommend may be divided among Luke Knoulton, the Leader of the said Township and his fifteen

“ Associates in the proportions herein after set forth,
 “ that is to say, &c.”

The case of the Township of Stukely has been resolved upon ever since the fifth December one thousand seven hundred and ninety nine, as appears by entry on the minutes, Land Book D. page 375, wherein the Committee report their opinion that this case comes under the second class, and on the nineteenth September one thousand eight hundred, it is ordered that a Patent do issue in favour of Samuel Willard and his Associates for one half of the Township of Stukely, and the Patent has issued accordingly.

Before they quit this part of the subject, the Committee cannot refrain from observing, that after all the complaints that have been made, respecting the number of Settlers who have embarked their labour and property on the Waste Lands of the Crown, it appears from the result of an actual Survey, that five Townships only fall under this predicament; and in regard to the expense, it is a principle generally admitted and confirmed by experience, that all new settlers are fully indemnified by the Ashes produced by clearing, and the first crop.

20. The second charge turns upon the inconsistency of the Executive Council, respecting the encouragement for actual settlement.

The merits of this charge have been amply discussed in the proceedings of the Executive Council, which proceedings were made public in certain Pamphlets published in the year 1798.

The Committee will give a brief outline of the cause and the nature of this inconsistency, and among other particulars, refer to an Extract from a Report of the Executive Council, 27th August 1798, subjoined in the Appendix, and marked with the Letter C.

Early in the year 1792, when the Land granting business was entered upon in consequence of the Royal instructions, framed in conformity to the provisions of

who had been long conversant in the practice of the Land Granting Department, in the former Colonies of New-York and New-Hampshire: at the outset of the business, the Chairman, after observing that "*An abundant population* of these Colonies was the main object " of the Royal Instructions," proposed a detailed plan of proceedings, and the Committee concurred in the mode of proceeding suggested by the Chair,

In consequence of the mode thus adopted, and before many of the most essential points connected with the business, such as the expenses of the Survey, the position of the Reserves, or the appointment of Commissioners had been ascertained and adjusted, Warrants of Survey were in the course of a few months issued to divers persons, for upwards of 150 Townships of 10 miles square.

The uncertainty respecting the particulars above-mentioned and other causes, suspended the further progress till towards the close of June 1794, when the business was resumed by order of His Excellency Lord Dorchester; at this period the former Chairman, William Smith, Esquire, had paid the debt of nature, and the duty of presiding in Committees of the whole Council, devolved on his Successor in the Chief Justiceship, and soon after five additional Members were called to the Executive Council.

The very important business of the Land granting Department being a novelty as well to the succeeding Chairman as to the new Members, it became their Duty to acquaint themselves both with the Rules assigned for their conduct by His Majesty's Royal Instructions, and with the anterior proceedings of the Board from its first Institution as they appeared upon the records of the Council.

Upon perusing the very elaborate Report drawn up by the late Chairman introductory to the Plan of proceedings by him suggested, and after observing the

numerous orders that had been issued in consequence thereof, it appeared evident to the Committee, that both the Theory laid down and the Practice adopted were in manifest violation of His Majesty's Instructions. For whereas the 35th Article of the said Instructions is of the tenor following :

“ And in order to prevent any persons dissaffected to us and our Government from becoming Settlers in our said Province of Lower Canada, it is our will and pleasure that no Warrants for Surveying Lands be granted by you, or the Lieutenant Governor or Person administering the Government for the time being, unless the Person or Persons applying for the same do at the time of making such application, besides taking the usual Oaths directed by Law, also make and subscribe the following declaration in your or his presence or in the presence of such person or persons as shall by you or him be appointed for that purpose, viz : I. A. B. do promise and declare that I will maintain and defend to the utmost of my power the authority of the King in His Parliament as the Supreme Legislature of this Province;”

Nevertheless in direct opposition to the Royal Will and Pleasure, Warrants of Survey for upwards of 150 Townships have been issued at a time when no Commissioners for the purpose in the said instruction had been even appointed.

To rectify this manifest mistake, to preserve the Faith of Government as implied by the Grant of the Warrant of Survey, and to prevent the like evil in future, the most effectual remedy that occurred to the Committee, was to recommend the issuing of certain Orders in Council as set forth in the Appendix (D.) and since that time no Warrant of Survey has been issued, but in conformity to the Royal Instructions.

The existence of the Error as well as the detection of it, together with the efforts of His Majesty's Council

to obviate any prejudice that might arise therefrom, were well known to the Memorialist, altho' it might not suit his purpose to state them, and also to the parties interested, so that the repeated endeavours of the Council to restrain unauthorized Settlement by their repeated Order issued during the course of several years, and the public notoriety of the fact may well justify the assertion of the Committee on which an inconsistency is attempted to be established.

The Committee are ready to admit that, *primâ facie*, there appears to be an inconsistency of declaration between the Extracts of the years 1792 and 1798, as stated by the Memorialist, but they humbly apprehend that the charge of inconsistency cannot in reality attach upon the conduct of His Majesty's Executive Government in respect to the Applicants for Lands, when, instead of adopting a rigorous course, they studiously endeavoured to remedy the inconvenience by allowing an ample period to that end and by Public Notice inviting all the parties concerned to avail themselves of it.

The Committee conceive they would have been much more censurable had they persisted in an error after it had been discovered, and humbly persuade themselves that under those circumstances the chief objects for their attention were to secure the faith of Government from merited reproach, and the conduct of the Executive Council from the charge of disobedience.

The third general topic of complaint against the Executive Council regards their conduct with respect to the requisite of taking the Oaths.

On this head the Committee humbly persuade themselves they are exempt from reproach, and that their conduct is justifiable on the clearest Grounds, not only because it was regulated by a sense of Duty, but because it was their peculiar Duty to exert their vigilance at that particular time, as a point of Duty they are ordered by the King's Instructions to take pledges

for the Allegiance of the Applicants before the issuing of any Warrant of Survey; they were therefore bound upon a principle of obedience to exact the Oaths at all times. But by those who can recollect the condition of this Province from the beginning of the year 1794, to the final ratification of the Treaty with the United States of America, the period complained of, when apprehensions of the most serious nature were excited in the minds of the truly Loyal among His Majesty's Subjects at the probable effects to be expected from this "*abundant population*" of questionable characters who were to occupy one hundred and fifty Townships of ten miles square, and who were all to come from a Government with whom there were daily expectations of hostility, it will be admitted that that was not precisely the period for His Majesty's Government in Canada to relax those restrictions so wisely established to prevent them from being overwhelmed by a torrent of disaffection.

On the contrary it was their peculiar duty to hold out every species of discouragement consistent with Public Justice and good faith against the inroads of such enterprising neighbours, and the Committee are disposed to flatter themselves that their perseverance in this respect by their constant admonitions was not altogether without a beneficial consequence, although they are ready to admit that in some cases this vigilance has been eluded.

But although the Committee feel no difficulty in thus explaining their motives to Your Excellency for the information of the Lords of His Majesty's Council, yet they are by no means disposed to allow that in the application of the said Orders of Council, they have dealt harshly or rigorously in any case where the party had equitable merits to disclose.

On the contrary, although they have had recourse to those Orders, as they necessarily must, in discussing the many hundred unsupported claims and groundless pre-

tensions that have been laid before them, and were well content to have such general rules to resort to, in their decision upon matters involving interests and expectations, which would be supported by much eagerness and anxiety, yet they held themselves at liberty to pass, and actually have passed an equitable construction in all cases, when the party had claim to produce either of known personal loyalty, or real improvement on the Lands.

The specific cases of the Townships of Stukely and Orford are mentioned under this head, and the hardships sustained by the respective Leaders enlarged upon, the Committee have good reasons to assign, to excuse themselves from the imputations of having inflicted those hardships: but the detail were now useless, as the original Leaders and Associates of those Townships, and numbers of others, are now in actual possession under legal Grants, or may obtain possession under the Orders passed in Council, since the commencement of Your Excellency's administration, to the amount of nearly One Million Eight Hundred Thousand Acres.

Having submitted these remarks to Your Excellency, in the order and manner proposed, the Committee humbly hope that they now stand justified from the charges adduced against them.

They do not understand themselves as called upon to offer any opinion on the several prayers contained in the said Memorial, as the same are addressed to His Majesty's Royal Munificence, further than to submit to Your Excellency's serious consideration the great inconvenience and confusion which must unavoidably follow from the adoption of any new regulations.

They will only take occasion to mention, that as the sixth prayer contains the specific cases of the Townships of Shipton and Brompton, that Orders of Council have already passed for the same, and that the parties are in actual possession of the said Townships as stated in the said prayer.

The only remaining observation with which the Committee propose to trouble Your Excellency, is, that having already in permanent Committee considered the whole mass of cases, both for Townships and of Individual applications which stood referred to them, and having according to the best of their Judgment reported thereon, conformably to the late regulations transmitted by His Majesty's Secretary of State, before the receipt of the Memorial now under consideration, which several Reports have been approved of by Your Excellency in Council; and should such their proceedings meet with the gracious and final confirmation of His Majesty, the whole business will of course be so far understood to be settled and adjusted, and the Lords of His Majesty's Most Honourable Privy Council will thereby be exempted from the trouble of reporting, on the expediency of granting the several prayers of the said Memorial, in so far as they may interfere with the arrangements already made, and now acting upon in this Province.

All which is humbly submitted to Your Excellency's wisdom.

By Order,

(Signed)

Wm. OSGOODE, *Chairman.*

Council Chambers, }
Quebec, 26 May, 1801. }

Certified.

HERMAN W. RYLAND.

APPENDIX A.

Newport :—On Inspection of the Diagram returned with the papers relating to this Township, it was suggested by a Member, that the said Diagram was signed by a person not duly qualified, and it being also remarked that Exhibits of the sort now produced were most easily fabricated and afforded no satisfactory evidence that any actual subdivision had really been made in the Field, it was thought expedient to endeavour to obtain further information on the subject, and was therefore

Resolved, That Mr. Vondenvelden, Assistant to the Surveyor General, be requested to attend.

Mr. Vondenvelden attended accordingly.

Q. Please to look at the Exhibit now produced marked No. 5, purporting to be a Diagram of the outlines and subdivision of the Township of Newport and signed by Christopher S. Bailey, Deputy Provincial Surveyor—has the said Bailey a Provincial Commission?

A. He has not.

Q. Can you from inspection of this paper, which purports to be a Diagram, undertake to determine whether it was made from actual Field work or drawn up in the Closet?

A. It is impossible to judge.

Q. Is it not necessary that a Field-Book should be returned with the Diagram into the Surveyor General's Office?

A. It is—but as no Warrant of subdivision has issued from the Surveyor General's Office, he has refused to receive any such Field-Book, should it be made.

Q. Has any Patent issued for Lands in the Township of Farnham?

A. There has.

Q. Did such Patent issue in consequence of actual Survey or otherwise?

A. I cannot tell.

Q. Is it not a direction in the Warrant of Survey, that an actual Survey should be made?

A. It is.

Q. How then did you make your Return respecting Farnham?

A. The Return of Survey and Diagram was delivered to me by Mr. Gale, so worded as if Instructions had been given to somebody to make the Return—I can produce it.

Do so.

Q. Whose hand writing is the Paper you now produce?

A. Mr. Gale's.

Q. Is there any Signature to it?

A. There is none.

Q. Was it in consequence of this Return his Patent was made out?

A. It was—there is no other in the Office but the one now produced.

Q. Can you say, whether that Diagram was or was not made in consequence of an actual Survey?

A. I cannot.

Q. Did a Warrant of subdivision issue for the Township of Farnham?

A. Yes.

Q. Did any Field-Book accompany the Return?

A. No.

Q. If any Field-Book had been offered should you have held yourself bound to accept it?

A. Yes, after a Warrant of Survey had regularly passed.

Q. Have you any means of knowing whether Diagrams such as are now returned and lie upon the Table were or were not made in consequence of an Actual Survey.

A. No—it is impossible to tell.

Q. Ought not Field-Books to have been returned with those Diagrams?

A. There regularly ought.

Q. When a Diagram is returned without a Field-Book, is it or not presumptive evidence, that the Diagram was not made in consequence of an actual Survey?

A. It is. I would not have returned the Diagram? of an actual Survey, without a Field-Book.

Mr. Vondenvelden withdrew.

The Committee deliberate.

Resolved, That the Committee will suspend their determination on this case, until more satisfactory evidence be produced to them, that an actual Survey of Subdivision has been made of the Township of Newport. And the Clerk of the Council be directed forthwith to give notice to the parties concerned.

On considering the testimony given by Mr. Vondenvelden, Assistant to the Surveyor General, at the last Meeting, respecting the Diagram annexed to the Patent for Lands in Farnham, and reflecting on the facility of the transaction, the Committee have great reason to suspect that many of the Diagrams produced, purporting to set forth the subdivisions of Townships as from real admeasurement, have not been projected from actual Survey in the Field, in which case they are altogether useless and illusory; and foreseeing that unless proper measures be adopted, to ascertain and distinguish by lasting tokens, the whole of the allotments reserved for the Church and Crown in every Township, conformably to His Majesty's instructions, much strife, confusion and fraud will unavoidably take place in time to come.

The Committee do therefore

Resolve, That it is highly expedient to represent to His Excellency the necessity of giving specific Instructions to the Surveyor General, that he do in no case whatever certify any Diagram, to be annexed to a Patent for granting any part of the Waste Lands of the Crown, until he be duly satisfied that a Survey of the Lands to be granted has been really made by a De-

puty Provincial Surveyor, by actual admeasurement in the Field, and that he do accept of no Return of Survey unless the same be accompanied by a Field-Book, setting forth that the Allotments reserved for the Church and Crown, have been duly made and ascertained, and specifying the spots where, and the particular Marks and Tokens by which such Reserves have been distinguished, in order that the same may remain of Record in his Office, for the security and protection of the Lands so reserved, in case of future litigation.

APPENDIX B.

On inspecting the Diagram annexed to the Return of the Warrant of Survey of the Township of Orford, it was suggested that the Diagram was not conformable to His Majesty's Royal Instructions, or the Warrant of Survey. It was proposed to call in Mr. Vondenvelden, acting for the Surveyor General, who attended accordingly, and the following examination took place :

Q. Is Mr. Holland the Surveyor General in a capacity to act for himself ?

A. No.

Q. Who acts for him ?

A. I do.

Q. Has this Warrant of Survey come regularly into your Office ?

A. Yes.

Q. Who made the Return to it ?

A. I did.

Q. Are the Return and Diagram now shewn to you of the Township of Orford conformable to the directions given in the Warrant of Survey ?

A. No.

Q. Can you assign the reason why ?

A. I suppose because the Surveyor has not applied to our Office.

Q. Would he have been supplied with proper instructions had he made such application ?

A. He would.

Q. Do you know of any other Townships in the same predicament ?

A. Almost every one.

Q. How comes it to pass that the Surveyor General uniformly has certified both by his Return and Diagram that they were conformable to the Warrant of Survey ?

A. Because there were a great many Townships already surveyed, and there was no other means of proceeding.

Upon further examination it appears that, as the generality of Surveys that have already been made, have been of detached Townships, no very serious inconvenience will arise, but the Examinee apprehends that, if the practice of surveying without receiving proper Instructions from the Surveyor General's Office be continued, and every Surveyor be allowed to run his Lines without specific Instructions, the utmost confusion and litigation must necessarily ensue, and whereas there is good reason to apprehend that many Surveys are now carrying on in the like irregular manner, the Committee apprehend it to be their duty to take the earliest means of representing the matter to Your Excellency, and humbly submit the expediency of issuing forthwith a Public Advertisement to the following effect :

EXECUTIVE COUNCIL OFFICE.

Whereas inconvenience has arisen from the negligence of Surveyors in not applying to the Surveyor General's Office for general or specific Instructions, as the case may require, previously to their proceeding on the Survey of Townships or any part thereof. And whereas much confusion and strife may hereafter ensue from

such neglect : it is hereby ordered, that every Surveyor shall, before he enters upon the execution of any Warrant of Survey, apply to the said Office for such Instructions as shall at the said Office be deemed requisite to be given in such behalf, and that from and after the date of this Order, no Return or Diagram of Survey shall be certified by the said Surveyor General or any other person acting in such capacity, unless it shall appear that such Survey has been made in consequence of Instructions received from the said Office, and that the Return and Diagram are conformable thereto.

APPENDIX C.

It appears by an Entry in the Council Book, (marked C.) of the 20th February 1792, that a Land Committee was on that day named in Council.

On the 17th March 1792, a Report of a Committee of the whole Council upon certain doubts suggested by the Land Committee, is entered.

In this Report after observing that "An abundant Population of these Countries seem to be the main object of the Royal Instructions" the Chairman of the Committee proposes a plan for the ordinary progress of the business of the Land Office Department, as follows :

1st. A Petition to the Governor for the vacancy desired, under a description to be accurately ascertained by a future Survey.

2d. The reference of it to a Committee of the Council for their Report.

3d. Judgment in Council thereon; and when for the Grant, an Order for issuing a Warrant to the Surveyor General's Office, for the Return of a Survey agreeable to the Royal Instructions; this Warrant to be under the Governor's Hand and Seal at Arms.

4th. Then the adjustment in Council of the shares of each of the Patentees.

5th. A transmission of the List by the Clerk of the Council to the Commissioners for taking their qualifications, under standing instructions for that purpose, within the time limited by an Act or Minute of Council.

6th. A Report from the Commissioner to the Council Office, whence those papers are to go into the hands of the Attorney General for his report to the Secretary's Office of the draft of a Patent.

7th. The Patent to be there engrossed and issued under the Great Seal, upon payment of the Fees due to all the Officers concerned, and to be accordingly distributed by the Secretary, who is to record the Patent, and preserve all the detached papers in due files.

After which it is recorded, that the Committee concur in the mode of proceeding aforementioned, suggested by the Chair.

And that this Report was finally concurred in Council.

From some cause which it were now useless to enquire into, it so happened that the progress proposed by the Chairman of that day, directly inverted the course commanded by His Majesty's Instructions: for it appears that by the progress proposed, the order for issuing a Warrant for the Return of a Survey, precedes the transmission of the List for taking the qualifications: whereas by His Majesty's Royal Instructions, N^o. 35, it is expressly directed that, "In order to prevent any persons disaffected to us and our Government from becoming Settlers in our said Province of Lower-Canada, it is our will and pleasure, that no Warrants for surveying Lands be granted by you or the Lieutenant Governor or the person administering the Government for the time being, unless the person or persons applying do, at the time of making such application, besides taking the usual Oaths directed by Law, also make and subscribe the following Declaration in your or his presence, or in the presence of

“such person or persons as shall by you or him be appointed, &c.”

In consequence of the mode thus adopted, upwards of 150 Warrants of Survey for Townships were issued, even before any Commissioners were appointed to administer the solemnities previously required by the said Instructions : but notwithstanding the number of Warrants thus issued, the business of settlement went on very tardily, even at the time when it was understood that Government was to discharge half the expense of running the outlines, which delay, as appears by Reports from the Land Committee and the Surveyor General's Office, arose from the uncertainty of the Settlers with respect to three material points.

First,—With regard to the position of the Reserves intended for the benefit of the Crown and the support of the Protestant Clergy ;—Secondly, the amount of the Fees to be paid on obtaining a Patent, and thirdly, the quantity of Land which the Petitioners and their Associates may expect.—A considerable portion of time elapsed before these points were settled. However towards the close of the year seventeen hundred and ninety four, the objects of the Reserves and Fees being brought forward by His Excellency Lord Dorchester were ascertained and determined by His Lordship in Council, and afterwards were made known to the Public.

At this period the former Chairman of the Committee of the whole Council was no more, and within a short time afterwards every Member of the present Council had a Seat at the Board.

The business of the Land granting began seriously to be resumed and Commissioners for giving effect to His Majesty's Instructions were duly appointed.

Upon a view of former proceedings the error that had heretofore occurred was noticed and immediate course was taken to repair it, and this in the opinion of the Committee is the true period at which an effective

commencement of the Land Granting Department ought to be fixed, not only because the former proceedings being contrary to the express Instructions of Government (altho' Government with becoming dignity did not mean to vacate them) were null, but also because the essential powers to put the business into motion were not 'till this juncture combined or even created. From this time the Executive Council being aware of the mischiefs arising from actual settlement without a compliance with the previous formalities, have uniformly endeavoured to inhibit it, and have employed themselves to carry His Majesty's Instructions into execution, with respect to past proceedings, if not in the order in which they had been directed, at least to their full extent ; and with respect to the future proceedings duly to observe the order prescribed by His Majesty to prevent actual Settlement 'till all previous requisites, should be faithfully observed, and as evidence, that such was both their resolve and practice, they beg leave to refer Your Excellency to a Public Notice, bearing date the tenth October seventeen hundred and ninety four, recorded in the Council Book (C), page 367, in which the distinction before alluded to is plainly made, namely, that those who had obtained Warrants of Survey should comply with the directions therein stated, prior to the issuing of any Grant of Land ; and that they who meant to apply for any such Warrant should also conform thereto, and this was published with a direct view of preventing the unauthorized Settlement of any person in future, as no Warrant of Survey would be issued or has since been issued without a previous compliance with such directions ; and with a view to quicken the attention of those who, having taken possession under their Warrant of Survey, were contented with their occupancy and did not seem disposed to give themselves any further trouble, Public Notice was given from the Executive Council Office, on the seven.

teenth January seventeen hundred and ninety five, to all persons who have obtained Warrants of Survey or Orders of His Excellency the Governor in Council, for any part of His Majesty's ungranted Lands in this Province, to comply with the requirements contained in the said Advertisement, on or before the first day of August next, and that in default of such compliance they will be considered by Government to have relinquished their pretensions under any Order of Council or Warrant of Survey, that may have been directed in consequence.

At the expiration of this period it appeared by the Schedules annexed and the Returns of the Commissioners, that of upwards of 300 Leaders and ten thousand proposed Associates, the number of those who had complied with the directions did not exceed 550; so that the number of persons who had duly qualified themselves bore a very small proportion, not only to the amount of the applicants, but even to those who were supposed to have made actual Settlement on the Land, who having neglected to comply with the terms of the notice were clearly subject to the penalty thereby announced.—After these forfeitures had accrued it was generally understood that in addition to these persons who had satisfied themselves with a bare Warrant of Survey of the outlines of a Township, a number of others, under various pretexts, some from having purchased pretensions and others because it suited their interest, had made actual Settlement in various quarters, and many upon Lands reserved for the Support of a Protestant Clergy and the future disposition of the Crown.

To check this propensity it was thought expedient to issue a Proclamation as mentioned in the former Report, but this Proclamation never was intended by the Executive Council, nor could upon any principle of sound construction be supposed to affect the parties alluded to in Your Excellency's Order of reference, who might

have an equitable claim upon Government, but those only who having forfeited their claim or having no claim at all had made actual Settlement without sufficient authority.

These successive measures would be alone sufficient to evince the anxiety of the Executive Council to resist actual Settlement without authority from the first moment that the necessary powers to carry the Granting of Lands into effect were in existence ; but the most convincing proof of their disposition as well as of the influence of that disposition upon the public opinion, arises from the conduct and forbearance of a numerous body of applicants who, possessed of that operative Instrument, a warrant of Survey, have, from a principle of decency, refrained from taking possession. This is a fact which added to their Public Notices affords in the opinion of the Committee the strongest proof of the position they have asserted.

APPENDIX D.

Whereas several Warrants of Survey of the ungranted Lands of the Crown have been directed to be made out on behalf of divers persons who have applied for the same and their Associates; And whereas it is expedient, that prior to the issuing of any Grant of Land, enquiry should be made into the principles and character of such persons as may be desirous of becoming Settlers in this Province, before they are admitted to take the Oaths and subscribe the Declaration by His Majesty's Instructions directed to be required, Public Notice is hereby given that for the purpose aforesaid His Excellency Guy Lord Dorchester the Governor in Council has been pleased to nominate and appoint the following persons to be Commissioners :

William Lindsay, Sen.	}	at Quebec.
Louis Deschenaux, Esquires,		
Le Chevalier Tonnancour,	}	at Three Rivers.
George Dame, Esquires,		
James Sawyers,	}	at William Henry.
François Corbin, Esquires,		
James M'Gill,	}	at Montreal.
Pierre Guy, Esquires,		
Patrick Conroy, Esquire,	}	at St. Johns.
Réné Boileau, Esquire,		at Chambly.
Henry Ruiter,	}	at Missisquoui Bay.
John Ruiter,		
Philip Luke,		
Mr. Jesse Pennoyer,		

and Public Notice is hereby further given, that all persons having obtained a Warrant of Survey as herein before mentioned, or meaning to apply for any such Warrant of Survey, do give unto one of the Commissioners herein before mentioned, a List containing the following particulars respecting them and each of them, and also respecting each and every Associate connected with them, that is to say; the name, place of abode, and occupation, the religious denomination, the numbers of persons contained in the family, distinguishing the Males from the Females, and also the number of those who are under the age of fourteen from that of those who are above, and the Township and place wherein he proposes to settle; and likewise that the said parties do transmit a Duplicate of the said List, containing such particulars as aforesaid, to the Clerk of the Executive Council, and due consideration being had thereof, the said Commissioners shall with all convenient dispatch receive Instructions, specifying the names of the parties whom they shall be authorized to admit to take and make the Oaths and Subscription aforesaid, in order to their becoming Settlers in this Province. And Public Notice is hereby further given, that no person

shall be deemed qualified to partake of His Majesty's Bounty, whose name together with the particulars herein before required, shall not be included in a List to be delivered in as aforesaid, or to receive any Grant of Lands within this Province, who shall not have given in or caused to be given in a statement of the particulars herein before set forth.

Whereas divers persons have heretofore petitioned His Excellency the Governor in Council for Grants of various parcels of the vacant Lands of the Crown in this Province, stating that they with their several Associates were desirous of becoming Settlers therein, upon which Warrants of Survey have been issued, for running the outlines of several Townships as specified in various Petitions ;

And whereas by an Advertisement bearing date the 10th October last, inserted in the Quebec Gazette. Public Notice was given that all persons having obtained Warrants of Survey as therein mentioned, or meaning to apply for any such Warrant, should give in to one of the Commissioners therein named, a List containing the particulars therein set forth ;

And Whereas by an Advertisement bearing date the twentieth of the same month, inserted in the Quebec Gazette, Public Notice was given that certain parts of the particulars required to be stated in such lists would be dispensed with ; And Whereas a few only of the applicants have hitherto complied with the tenor of the said Advertisement, and several other persons have lately petitioned His Excellency the Governor in Council for Grants of some of the Townships for which Warrants of Survey have been ordered ;

Public Notice is therefore now given to all persons who have obtained Warrants of Survey or Orders of His Excellency the Governor in Council, for any part of His Majesty's ungranted Lands in this Province, to comply with the requirement contained in the said Advertisements, on or before the first day of

August next, and that in the default of such compliance they will be considered by Government to have relinquished their pretensions under any Order of Council or Warrant of Survey that may have been directed in consequence, and that His Excellency the Governor in Council will thereafter proceed upon such subsequent Petitions as may have been presented for Grants of the same Township.

By Order of His Excellency the Governor in Council.

(Signed) J. WILLIAMS,
C. Ex. C.

Certified,
HERMAN W. RYLAND.

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